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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.              | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------------|------------------|
| 09/466,568   | 12/17/1999  | GERALD R. CRABTREE   | APBI-P16-316                     | 1333             |
| 28120  | 7590        | 02/09/2004           |                                  |                  |
| ROPES & GRAY LLP<br>ONE INTERNATIONAL PLACE<br>BOSTON, MA 02110-2624 |             |                      | EXAMINER<br>MCKELVEY, TERRY ALAN |                  |
|  |             |                      | ART UNIT                         | PAPER NUMBER     |
|  |             |                      | 1636                             |                  |

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|---|---------------------|

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| EXAMINER |
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| ART UNIT | PAPER |
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**Commissioner for Patents**

The reply filed on 11/28/03 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the reply concerning the pending obviousness-type double patenting rejections of record is not fully responsive because applicant did not positively indicate that the terminal disclaimers will be submitted upon the indication of allowable subject matter or set forth arguments why the rejections are traversed. The applicant's statement: "Applicants will submit terminal disclaimers, if necessary, upon indication of allowable subject matter." is not a positive indication that TDs will be filed because the "if necessary" clause leaves open the possibility for later argument concerning whether the filing of the TDs are necessary. Any such argument should take place in the instant response to the previous Office action, not in future prosecution. See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is 703-872-9306. **NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.**

Any inquiry concerning rejections or other major issues in this communication or earlier communications from the examiner should be directed to Terry A. McKelvey whose telephone number is (571) 272-0775. The examiner can normally be reached on Monday through Friday, except for Wednesdays, from about 7:30 AM to about 6:00 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to his office). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel can be reached on (703) 305-1998. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

**TERRY MCKELVEY  
PRIMARY EXAMINER**